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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,299	03/26/2004	Christian Bleys	Serie 6155	9269

7590 05/17/2005  
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EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/810,299	Applicant(s) BLEYS ET AL.	
	Examiner Nihir Patel	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on March 7<sup>th</sup>, 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 14, 17-20 and 22-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments with respect to **claims 11-29** have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims **11, 12, 14, 17, 18, 19, 20, 22, 27, 29, 30, 32, 33, 34, 35, 36, 37 and 38** are rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al. (US 5,099,837) in view of Jonsson et al. (US 3,741,208).

Referring to **claims 11, 12, 17, 18, 20, 22, 29, 30, 32, 34, 35, 37 and 38**, Russel discloses the applicant's invention as claimed with the exception of providing a respiratory assistance ventilator that comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure. Jonsson discloses a lung ventilator that does provide a respiratory assistance ventilator that comprises an internal gas circuit forming

Art Unit: 3743

a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure.

Therefore it would have been obvious to modify Russel's invention by providing a respiratory assistance ventilator that comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice, and a proportional valve being arranged on the internal circuit, the valve being controlled by control means cooperating with the man/machine interface, wherein the respiratory assistance ventilator further comprises a flow-rate sensor and a pressure sensor for measuring the flow-rate and the pressure of the gas in the internal circuit, the sensors cooperating with the control means in such a way as to permit automatic control and regulation of the proportional valve in terms of flow-rate or pressure as taught by Jonsson in order to better monitor the amount of gas being delivered to the patient.

**Referring to claims 14 and 33,** Russel discloses the applicant's invention as claimed with the exception of providing a respirator assistance device that comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve. Jonsson discloses a lung ventilator that does provide a respirator assistance device that comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve. Therefore it would have been obvious to modify Russel's invention by providing a respirator assistance device that

comprises a venturi injector arranged on the internal circuit, downstream of the proportional valve as taught by Jonsson in order to have better control the amount of gas being delivered.

**Referring to claims 19 and 36**, Russel discloses the applicant's invention as claimed with the exception of providing a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source. Jonsson discloses a lung ventilator that does provide a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source. Therefore it would have been obvious to modify Russel's invention by providing a pressure-reducing valve and ventilator that are protected by a protective hood fixed on the compressed gas source as taught by Jonsson in order to prevent the pressure-reducing valve and ventilator from being damaged.

**Referring to claim 27**, Russel discloses the applicant's invention as claimed with the exception of providing a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood fixed on the compressed gas source.

Jonsson discloses a lung ventilator that provides a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood

Art Unit: 3743

fixed on the compressed gas source. Therefore it would have been obvious to modify Russel's invention by providing a respiratory assistance ventilator comprises an internal gas circuit forming a fluidic connection from an inlet orifice to an outlet orifice and a proportional valve being arranged on the internal circuit the valve being controlled by control means cooperating with the man/machine interface and a pressure-reducing valve device, the respiratory assistance ventilator, and the ventilator are protected by a protective hood fixed on the compressed gas source as taught by Jonsson in order for the emergency ventilator to function more accurately.

Claims **23, 24, 25, 26 and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over Russel, Sr. et al. US Patent No. 5,099,837 in view of Dubois et al. US Patent No. 6,520,176.

**Referring to claims 23 and 24**, Russel discloses the applicant's invention as claimed with the exception of providing a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg. Dubois discloses a portable oxygen concentrator that a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg (see abstract). Therefore it would have been obvious to modify Russel's invention by providing a portable assembly apparatus for emergency ventilation that has a total weight less than 15 kg as taught by Dubois in order to make it easier to carry around.

**Referring to claim 25, 26, 28, 31 and 40**, Russel discloses the applicant's invention as claimed with the exception of providing a carrier arrangement selected from a group consisting of backpack; harness; and any similar carrying means. Dubois discloses a portable oxygen concentrator that does provide a carrier arrangement selected from a group consisting of backpack; harness; and any similar carrying means (see figure 5). Therefore it would have been obvious to modify Russel's invention by providing a carrier arrangement selected from a group

Art Unit: 3743

consisting of backpack; harness; and any similar carrying means as taught by Dubois in order to make it easier to carry around.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
May 10<sup>th</sup>, 2005



Henry Bennett  
Supervisory Patent Examiner  
Group 3700